

**Statement of the Honorable Greg Walden**  
**Chairman, Subcommittee on Communications and Technology**  
**Hearing on Reforming FCC Process**

June 22, 2011

*(Remarks Prepared for Delivery)*

Good morning. Before I begin my opening statement regarding FCC process reform, I wanted to update members of the committee on the ongoing efforts on our top issue: spectrum auctions and public safety networks. Key staff on both sides of the aisle, along with Ms. Eshoo and I, have been meeting regularly for several weeks to see if we can come to a bipartisan agreement on spectrum legislation. These talks continue to make progress, and I appreciate the good faith commitment of the staffs to this work and know that all involved are keenly aware of the need to move toward a conclusion soon, given the needs of our public safety community and the anniversary of 9/11. Meanwhile, our subcommittee has other work it can and must also undertake, including our continuing efforts to modernize and standardize the processes of the FCC, which is the focus of today's hearing.

We have before us a diverse panel of experts—representing industry, think tanks, consumer groups, academia, and the states—to testify on ways to improve the transparency and accountability of the FCC. To keep our discussion grounded, I have also circulated to my colleagues on the subcommittee and these experts a Discussion Draft of legislation; I view that legislative language as a starting point for today's conversation, and I thank all of you for your thoughtful analysis of the draft legislation and your testimony. I've heard from many who track these issues that they appreciate actually having a "draft" document to review and from which to make more informed comments. This is the kind of process I'd like to see used more often at the FCC. I look forward to you sharing your thoughts and ideas about best practices for the agency.

At our last hearing, we heard the FCC Chairman and his fellow commissioners testify on what was working at the FCC, recent improvements in the FCC's processes, and what could still be improved. That hearing has made me an optimist. Chairman Genachowski explained that the agency has already improved the transparency of the commission in several regards—by publishing the specific text of proposed rules, by releasing orders shortly after adoption, and by proposing to eliminate unnecessary and outdated regulations. But all of this is discretionary. Congress has the authority and the responsibility to ensure that the agency—conducting the public's business—does so with transparency and accountability. It's not asking too much to have the FCC actually codify a set of best practices and operate by them.

One idea in this mold is to ask the FCC to establish shot clocks so that parties know how quickly they can expect action in certain proceedings. Another is to ask the FCC to establish a means for the public to know the status of rule makings and other proceedings pending before the commission. And another is to ask the FCC to establish procedures for a bipartisan majority of commissioners to initiate action in a proceeding. By asking the FCC to regulate itself, we can give the agency the flexibility it needs to act while guarding against a lapse in the commission's practices. It's not my intent to micro-manage every decision and this legislation does not do that.

In considering other reforms, we must balance the need for congressional and public oversight of the commission with the flexibility the commission needs to promote competition in the marketplace. For example, the Administrative Conference of the United States recently recommended 60-day comment periods for “significant regulatory actions” as well as reply comment periods “where appropriate.” One idea is to strike a middle ground, requiring comment and reply comment periods of 30-days apiece, but only when the Administrative Procedures Act already requires the Commission to issue a NPRM.

Another idea is to extend to the FCC the cost-benefit analyses currently required of executive agencies, and endorsed just this year in President Obama’s Executive Order on regulatory reform. Cost-benefit analyses are valuable because they require an agency to squarely address the cost of regulation, determine whether other methods may be less costly, and make a reasoned determination that the benefits outweigh the costs. If the president’s requirement is good enough for the Department of Education and the Environmental Protection Agency, why not the FCC?

And trust me, the old argument that such a requirement will bog down the agency just doesn’t cut it. I’ve never met an agency that didn’t use this argument, yet they always seem to find money to buy new vehicles and buildings.

Finally, it may be possible to tighten the FCC’s transaction review standards to harms that directly arise from the transaction before it. Such a requirement is not meant to displace the standard of review but to focus the commission’s enquiry: If the Communications Act empowers the FCC to review a transfer of broadcast licenses but not other aspects of a transaction, the FCC should review that transfer of broadcast licenses and not other aspects of the transaction.

These ideas are not the end of the discussion but the beginning. I look forward to the thoughts of my colleagues and the panelists on moving forward.

As I said at the outset, this is a discussion draft, and I am open to the input of our panelists—that’s why you’re here...and to the input of the public and my colleagues. When it comes to improving the transparency, accountability and efficiency of the FCC, I’m convinced we can find common ground.